

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
FRANK SENIOR, on behalf of himself and all	:	
others similarly situated,	:	
	:	
Plaintiff,	:	22-CV-7064 (VSB)
	:	
-against-	:	<u>ORDER</u>
	:	
KEEP HEALTHY, INC.,	:	
	:	
Defendant.	:	
-----X	:	


VERNON S. BRODERICK, United States District Judge:

On December 9, 2022, Plaintiff filed an amended complaint pursuant to Federal Rule of Civil Procedure 15(a)(1)(B). “[W]hen a plaintiff properly amends [a] complaint after a defendant has filed a motion to dismiss that is still pending, the district court has the option of either denying the pending motion as moot or evaluating the motion in light of the facts alleged in the amended complaint.” *Pettaway v. Nat’l Recovery Sols., LLC*, 955 F.3d 299, 303–04 (2d Cir. 2020). Accordingly, it is hereby:

ORDERED that Defendant shall file a letter within seven (7) days deciding whether its motion to dismiss should be deemed moot without prejudice to refile a new motion to dismiss in accordance with Federal Rule of Civil Procedure 15(a)(3), or if I should evaluate Defendant’s current motion to dismiss in light of the facts alleged in the amended complaint.

SO ORDERED.

Dated: December 12, 2022
New York, New York


Vernon S. Broderick
United States District Judge